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No. 308

In the Supreme Court of the United States

OCTOBER TERM, 1932

THE UNITED STATES, PETITIONER
v.
MEMPHIS COTTON OIL COMPANY

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

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OPINION BELOW

The opinion of the Court of Claims (R. 38) is reported in 59 F. (2d) 276.

JURISDICTION

The judgment of the court below was entered May 31, 1932. (R. 40–41.) Petition for a writ of certiorari was filed August 19, 1932, and the writ was granted October 17, 1932. (R. 43.) The jurisdiction of this Court rests upon Section 3 (b) of the Act of February 13, 1925.

QUESTION PRESENTED

Whether the respondent may maintain a suit for the refund of 1922 and 1923 taxes, where the only claims for refund filed contained no statement of the grounds relied upon, but the Commissioner learned facts through a report of a revenue agent which if presented in the claims would have been an adequate basis for allowing a refund.

STATUTES AND REGULATIONS INVOLVED

The applicable provisions of the statutes and regulations involved are set forth in the Appendix (*infra*, p. 8).

STATEMENT

Respondent sued in the Court of Claims to recover overpayments of income taxes for the years 1922 and 1923. The following is a summary of the findings of facts made by that court (R. 33–38):

The respondent paid the last installment of its 1922 income taxes on December 7, 1923, and the last installment of its 1923 income taxes on December 6, 1924, the taxes for each year being overpaid. A claim for a refund for 1922 was filed on June 30, 1927, specifying no particular grounds but stating as follows:

> Deponent verily believes that this application should be allowed for the following reasons:
>
> The statement attached hereto shows—
>
> 1. That the amount of tax paid for this year was.. $25,626.25
> 2. And that the correct amount of tax due was... 24,296.56
> 3. And there was overpaid in error..... 1,329.69
> 4. Refund of which is requested and with interest as provided by law.

The statement attached to this claim by the plaintiff stated as follows:

Net income per books	$159,836.71
Taxable net income	194,372.46
Difference	34,535.75

Computation of tax

Net income	$194,372.46
12½ per cent	24,296.56
Previously paid	25,626.25
Overpaid	1,329.69

On the same day a claim for a refund of the 1923 taxes was filed by the respondent in similar form, likewise stating no specific grounds upon which the claim was based. No further claims were ever filed by the respondent. (R. 33–35.)

The matter was referred by the Commissioner of Internal Revenue to a revenue agent in the respondent's district with directions to examine the respondent's books and make a detailed report to the Commissioner. This report was received by the Commissioner on February 7, 1928, before the expiration of the time for filing claims for a refund of the 1923 taxes, but after the expiration of the time within which a claim might have been filed for a refund of 1922 taxes. This report showed that the respondent had been overassessed. The Deputy Commissioner on August 9, 1928, before the expiration of the period for filing a claim for refund of 1923 taxes (R. 23), wrote the respondent that a certificate of overassessment would issue in due course. Later, after further examination, the Deputy Commissioner wrote the respondent that because no evidence had been filed to support the general claims presented by the respondent, the claims would be rejected. On October 23, 1929, the respondent's claims for refund of 1922 and 1923 taxes were rejected on the ground that they were not sufficient under the statute, and that an allowance and refund of the overpayments for 1922 and 1923 were barred by the statute of limitations. (R. 35–38.)

The Court of Claims gave judgment for the respondent. (R. 40–41.)

SPECIFICATION OF ERRORS TO BE URGED

1. The Court of Claims erred in holding that a timely claim for refund specifying no grounds may support a suit for refund of taxes because the Commissioner, through a revenue agent, learned that an overpayment had been made by the respondent.

2. The Court of Claims erred in giving judgment for the respondent.

ARGUMENT

Under this Court's decision in *United States* v. *Felt & Tarrant Manufacturing Co.*, 283 U. S. 269, a document filed with the Commissioner of Internal Revenue requesting a refund of an alleged overpayment of taxes, but not stating the specific facts relied upon in asserting the claim, is not *a claim for refund* within the meaning of the Revenue Acts and applicable provisions of the Revised Statutes. Consequently, the filing of such a paper will not serve as the basis of a suit to recover the amount of an overpayment of taxes. In the instant case two such documents were filed by the respondent. Each was filed within the period allowed for filing claims for refunds, but neither stated any specific facts that were relied upon as grounds for refund. No attempt was made to amend either claim, and each was expressly rejected by the Commissioner because of its noncompliance with the statutory requirements. (R. 37.)

The Court of Claims held that this suit, instituted within two years from the time of the disallowance of these blanket claims, could be maintained because it appeared that the Commissioner, through his independent investigation, had learned of specific facts on which a refund could be granted to the respondent. This action of the court below was incorrect. The Commissioner's knowledge or ignorance is not material. Under Section 3226 of the Revised Statutes, as amended (*infra,* p. 9), such suit can not be maintained until a claim for refund has been duly filed in accordance with the Treasury Regulations. Such a claim was not filed before May 8, 1930, when this suit was commenced.

Under Section 284 (a) and (b) (1) of the Revenue Act of 1926 (*infra,* p. 8), the Commissioner had authority to make a refund within four years from the time of payment of the 1922 and 1923 taxes. He did not do so, and the respondent neglected to pursue its statutory remedy by filing valid claims for refund. As to the 1922 taxes, this four-year period expired on December 7, 1927, two months before the Commissioner received the agent's report indicating that there had been an overassessment. The opinion of the court below states that the general claims "gave the commissioner jurisdiction over the matter of an overpayment," and that the respondent "might have amended the claims." We submit that the Commissioner's authority to make refunds was not extended by these blanket claims, and that, as

argued by the Government in No. 141, *The United States* v. *Factors & Finance Company,* any amendment to these general claims designed to convert them into specific claims would not date back to the date of the original claim. But in any event no amendment was attempted by the taxpayer. The reasons for insistence on proper claims for refund are stated in our brief in that case. The statute makes no distinction between a case where the Commissioner learns of the overpayment from the taxpayer and one in which he learns of it from a subordinate. Orderly administration demands that the statute be complied with as fully in one case as the other or there will be no end to the complexities with which application of the simple rule of the statute may be surrounded. In the absence of some exception therein strict compliance is its mandate.

The Court of Claims in two recent decisions—*Electric Power & Light Corporation* v. *United States* and *Johnson* v. *United States,* both decided November 14, 1932, and printed in the Appendix, pp. 23-30, to the Government's brief in *Factors and Finance Company* v. *United States,* No. 141, current terms—qualified the scope of the opinion in the instant case. It limited the application of the rule to cases in which the Commissioner was advised for the first time of the facts disclosing an overpayment by an investigation undertaken by the Bureau of Internal Revenue but prompted by a claim for refund. But even thus restricted, the opinion

ignores the mandate of the statute and is in conflict with the decision of this Court in *United States* v. *Felt and Tarrant Mfg. Co., supra.*

There was no waiver of compliance by the Commissioner in this case. No certificate of overassessment was issued. Under these circumstances there is no basis in the statute for relief from a situation which the taxpayer could have avoided by following its requirements.

CONCLUSION

The decision of the court below is erroneous and should be reversed and judgment should be entered for the United States.

Respectfully submitted.

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NOVEMBER, 1932.

APPENDIX

Sections 284 (a), (b) (1), and 1113 (a) of the Revenue Act of 1926, c. 27, 44 Stat. 9, 66, 116, provide:

> SEC. 284. (a) Where there has been an overpayment of any income, war-profits, or excess-profits tax imposed by this Act, the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August 5, 1909, the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October 3, 1913, the Revenue Act of 1916, the Revenue Act of 1917, the Revenue Act of 1918, the Revenue Act of 1921, or the Revenue Act of 1924, or any such Act as amended, the amount of such overpayment shall, except as provided in subdivision (d), be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded immediately to the taxpayer.
>
> (b) Except as provided in subdivisions (c), (d), (e), and (g) of this section—
>
> (1) No such credit or refund shall be allowed or made after three years from the time the tax was paid in the case of a tax imposed by this Act, nor after four years from the time the tax was paid in the case of a tax imposed by any prior Act, unless before the expiration of such period a claim therefor is filed by the taxpayer; * * *
>
> (U. S. C. App., Title 26, Sec. 1065.)

SEC. 1113. (a) Section 3226 of the Revised Statutes, as amended, is reenacted without change, as follows:

"SEC. 3226. No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless such suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after any such disallowance notify the taxpayer thereof by mail."

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